

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ALEJANDRO HAWKINS,  
  
Defendant.

No. 1:23-cr-00115-ADA-BAM

ORDER GRANTING MOTION TO REVOKE  
DETENTION ORDER  
  
(ECF No. 138)

**I.**

**Procedural Background**

Defendant Alejandro Hawkins faces one count of distributing cocaine in violation of 21 U.S.C. § 841(a)(1). (ECF No. 122 at 12.) The parties agree that the conduct charged in the indictment concerns the alleged sale of 2.7 grams of cocaine on March 13, 2023. (ECF No. 138 at 6; ECF No. 145 at 4.) At a hearing on June 2, 2023, the assigned Magistrate Judge ordered Mr. Hawkins detained pending trial after determining that no combinations of release conditions would reasonably assure his appearance in Court and the safety of the community. (ECF No. 98.) On June 16, 2023, Mr. Hawkins filed a motion to revoke the Magistrate Judge's detention order, pursuant to 18 U.S.C. § 3145(b). (ECF No. 138.) The government filed its opposition on June 21, 2023. (ECF No. 145.) The Court held a hearing on July 18, 2023. Douglas Foster appeared for Mr. Hawkins and Justin Gilio appeared for the government.

## II.

### Factual Background

During the course of a racketeering investigation into members of the Norteño street gang, a federal wiretap recorded Mr. Hawkins speaking with a Norteño member about the sale of cocaine. (ECF No. 145 at 2.) The government subsequently placed a wiretap on Mr. Hawkins' phone and recorded numerous calls related to drug trafficking over a thirty-day period. (*Id.* at 1–2.) The wiretap also recorded a call in which Mr. Hawkins discussed a potential firearm sale involving a “45” to an unidentified man. (*Id.* at 4.) On March 13, 2023, surveillance units observed Mr. Hawkins make an alleged drug sale. (*Id.* at 4.) After Mr. Hawkins left the area, officers stopped the customer and located two baggies of cocaine nearby. (*Id.*) On May 25, 2023, officers searched Mr. Hawkins' residence pursuant to a search warrant, recovering several bindles of cocaine, \$14,714, approximately 950 rounds of ammunition, a Kevlar vest, two high-capacity magazines, a P80 firearm mold, and sixteen firearms, seven of which belonged to Mr. Hawkins and were found in his room. (*Id.* at 5–6.) Two of the firearms recovered from Mr. Hawkins' room “were unserialized Personally Manufactured Firearms (PMF) AR-15 type rifles with optics.” (*Id.* at 5.) Though the government has documentation that Mr. Hawkins owns a “Combat Commander 1911 Colt 45 Caliber pistol,” the search did not uncover this firearm, and there is no record that Mr. Hawkins sold it through a licensed firearms dealer. (*Id.* at 11.)

## III.

### Legal Standard

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Consequently, courts may detain a defendant prior to trial only when “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. 3142(b); *see also United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). Under certain conditions – including in cases, like this one, where the defendant faces a maximum term of imprisonment of ten years or more under the Controlled Substances Act, 21 U.S.C. § 801 et seq. – courts presume detention is necessary. 18 U.S.C. § 3142(e)(3)(A). If a

1 defendant proffers evidence to rebut this presumption, the government assumes the burden of  
2 persuading the court that detention is necessary. *Hir*, 517 F.3d at 1086. To rebut the presumption  
3 of detention, a defendant “must produce only ‘some evidence’ that he is not a flight risk and does  
4 not pose a danger to the community.” *United States v. Clark*, 791 F. Supp. 259, 260 (E.D. Wash.  
5 1992). The government’s burden, however, requires it to establish by a “clear preponderance of  
6 the evidence” that the defendant presents a risk of flight and by clear and convincing evidence that  
7 the defendant presents a danger to the community. *United States v. Motamedi*, 767 F.2d 1403, 1406  
8 (9th Cir. 1985); *see also* 18 U.S.C. § 3142(f). Courts consider the following factors in determining  
9 whether the government has met its burden: (1) the nature and circumstances of the charged offense;  
10 (2) the weight of the evidence; (3) the defendant’s history and characteristics, including the  
11 defendant’s “character, physical and mental condition, family ties, employment, financial  
12 resources, length of residence in the community, community ties, past conduct, and history relating  
13 to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;  
14 and (4) the nature and seriousness of the danger to any person or the community that would be  
15 posed by the defendant’s release.” 18 U.S.C. § 3142(g).

16 “Doubts regarding the propriety of release should be resolved in favor of the defendant.  
17 *Motamedi*, 767 F.2d at 1405; *see also United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990).  
18 If the court determines that there are conditions that will reasonably assure the defendant’s  
19 appearance and the safety of the community, it must release the defendant from pretrial detention  
20 under the least restrictive of those conditions. *Motamedi*, 767 F.2d at 1405.

21 “If a person is ordered detained by a magistrate judge . . . the person may file, with the court  
22 having original jurisdiction over the offense, a motion for revocation or amendment of the order.”  
23 18 U.S.C. § 3145(b). A district court reviews a magistrate judge’s detention order de novo. *United*  
24 *States v. Koenig*, 912 F.2d 1190, 1192–93 (9th Cir. 1990).

#### 25 IV.

#### 26 Discussion

27 Mr. Hawkins has proffered some evidence regarding his history, employment, ties to the  
28 area, and circumstances surrounding the allegations. The burden, therefore, has shifted to the

1 government to persuade the Court that there is no combination of conditions that can reasonably  
 2 assure Mr. Hawkins' appearance in court and the safety of the community.

3 **A. Assessing the § 3142(g) factors**

4 **i. Nature and circumstances of the charged offense**

5 As the government notes, Congress has determined that distribution of cocaine is a  
 6 particularly serious offense. (ECF No. 145 at 8.) The fact that charges under 21 U.S.C. 841 trigger  
 7 a statutory presumption of dangerousness reflects this legislative conclusion. 18 U.S.C. §  
 8 3142(e)(3)(A); *accord United States v. Leon*, 766 F.2d 77, 81 (2d Cir. 1985) (“[I]t is clear that the  
 9 harm to society caused by narcotics trafficking is encompassed within Congress’ definition of  
 10 ‘danger.’”); *United States v. Strong*, 775 F.2d 504, 507 (3d Cir. 1985) (“The statutory language, as  
 11 well as the legislative history, [unequivocally] establishes that Congress intended to equate traffic  
 12 in drugs with a danger to the community.”). While Mr. Hawkins has proffered evidence to rebut  
 13 the presumption of detention, that proffer does not erase the presumption. *Hir*, 517 F.3d at 1086.  
 14 “[R]ather the presumption ‘remains in the case as an evidentiary finding militating against release,  
 15 to be weighed along with other evidence relevant to factors listed in § 3142(g).’” *Id.* (quoting  
 16 *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)).

17 Recognizing the dangerous nature of drug distribution is however, only one half of the  
 18 inquiry under the first § 3142(g) factor. The Court must also consider the circumstances  
 19 surrounding the conduct at issue. Here, the government has charged Mr. Hawkins with a single  
 20 sale of 2.7 grams of cocaine. There are no allegations of threats, violence, or the presence of  
 21 weapons during Mr. Hawkins’ interaction with the alleged buyer.

22 **ii. Weight of the evidence**

23 Out of all the § 3142(g) factors, “the weight of the evidence is the least important, and the  
 24 statute neither requires nor permits a pretrial determination of guilt.” *United States v. Gebro*, 948  
 25 F.2d 1118, 1121 (9th Cir. 1991). The government contends that there is substantial evidence  
 26 pointing toward Mr. Hawkins’ guilt. (ECF No. 145 at 9.) It proffers that a wiretap recorded Mr.  
 27 Hawkins discussing drug trafficking on multiple occasions over the course of a month. (*Id.*)  
 28 Moreover, a search of Mr. Hawkins’ home revealed narcotics, weapons, and large sums of money

1 consistent with “high frequency” drug trafficking behavior. (*See id.* at 5–6, 10.) Finally, a  
2 surveillance team observed the transaction at issue in this case after monitoring the wiretap on Mr.  
3 Hawkins’ phone. (*Id.* at 4.) Mr. Hawkins does not dispute this argument, instead emphasizing that  
4 courts accord the least weight to this factor. (ECF No. 138 at 15.)

5 **iii. Mr. Hawkins’ history and characteristics**

6 Mr. Hawkins has no criminal history and asserts that he has no record of problematic drug  
7 or alcohol use. (ECF No. 138 at 13.) Additionally, Mr. Hawkins emphasizes his strong ties to the  
8 Eastern District. He has lived in the area since his childhood. (*Id.* at 12.) He also has numerous  
9 family members nearby, including his parents and three siblings who have attended each of Mr.  
10 Hawkins’ court appearances. (*Id.*) Not only does Mr. Hawkins have strong ties to the Eastern  
11 District, but he also has no passport or ties outside California, evidencing a lack of incentive to flee  
12 the area. (*Id.* at 13.) Finally, Mr. Hawkins asserts that, upon his release, he will have full  
13 employment at HMC Farms in nearby Kingsburg, where he has worked as a technician and laborer  
14 since 2019. (*Id.*)

15 The government asserts that Mr. Hawkins’ strong ties to the Eastern District are exactly  
16 what have enabled him to operate as a “high frequency” drug dealer and that his release will permit  
17 him to continue this pattern of behavior. (ECF No. 145 at 10.) Even though the government has  
18 charged Mr. Hawkins with only a single distribution count, it argues that the Court can infer that  
19 Mr. Hawkins operates a large-scale distribution business based on the narcotics and firearms  
20 recovered from his home as well as the numerous trafficking-related calls that the wiretap  
21 intercepted. (*Id.* at 9–10.) In light of this, the government argues, Mr. Hawkins’ employment at  
22 HMC Farms is concerning because it indicates that he is “motivated by profit rather than merely  
23 trying to provide for himself or his family.” (*Id.* at 10.) Finally, the government posits that Mr.  
24 Hawkins’ possession of unserialized firearms indicates “a history of not complying with directives”  
25 and makes him a flight risk. (*Id.* at 10–11.)

26 As an initial matter, the Court rejects the government’s argument that Mr. Hawkins’  
27 possession of unserialized firearms inside his own home makes him a flight risk. The government  
28 cites to California Code of Regulations section 5505 et seq. to demonstrate that Mr. Hawkins should

1 have sought to add serial numbers to these firearms. It is not clear to the Court, however, that this  
2 conduct was criminal at the time of Mr. Hawkins' arrest. *Cf.* Cal. Pen. Code § 23920(b)  
3 (criminalizing, on or after January 1, 2024, the knowing possession of "any firearm that does not  
4 have a valid state or federal serial number or mark of identification"). Even if it had been, the  
5 charge would have been classified as a misdemeanor. *Id.* Describing such conduct as "a history  
6 of not complying with directives" sufficient to warrant pretrial detention is hyperbolic to say the  
7 least.

8 Nor does the Court find compelling the government's implication that Mr. Hawkins'  
9 employment as a technician and laborer somehow makes him a greater potential danger to the  
10 community. Not only does full-time employment make it less likely that Mr. Hawkins will need  
11 to engage in illegal activity to make ends meet, but it will also "bring him into daily contact with  
12 law-abiding co-workers and occupy his time, reducing the likelihood of his engaging in acts that  
13 endanger the community if released." *United States v. Orozco*, No. 2:18-cr-00104, 2020 WL  
14 2745694, at \*3 (E.D. Cal. May 27, 2020). Moreover, the fact that Mr. Hawkins has maintained a  
15 job since 2019 may cut against the government's argument about the depth of his involvement in  
16 the drug trade. *Cf. United States v. Freitas*, 602 F. Supp. 1283, 1295 (N.D. Cal. 1985) (listing "the  
17 fact that the defendant has substantial resources even though he has no regular occupation" as a  
18 factor indicating a deep involvement in the drug trade).

19 Most persuasive are the results of the government's wiretap of Mr. Hawkins' phone and the  
20 items it recovered during the execution of the search warrant. This evidence certainly points to Mr.  
21 Hawkins' involvement in drug trafficking beyond the single instance at issue in this case. This is  
22 concerning. Nevertheless, as Mr. Hawkins points out, the government has not charged any of this  
23 broader conduct, and the Court must not presume that Mr. Hawkins is guilty of the charged offense,  
24 much less other uncharged conduct. *See Motamedi*, 767 F.2d at 1408.

25 **iv. Nature and seriousness of danger to the community**

26 Beyond the inherent dangerousness of drug trafficking, the government asserts that the  
27 Court should pay particular attention to the number of firearms officers recovered at Mr. Hawkins'  
28 residence. (ECF No. 145 at 10.) Apart from the location of firearms within his own home, the

1 government has provided no evidence or allegation that Mr. Hawkins used firearms – or any  
2 weapon for that matter – during any drug transaction. While narcotics trafficking may often involve  
3 the use of firearms, courts have not found “a presumption as to the presence of a firearm in illicit  
4 narcotics transactions.” *United States v. Willis*, 899 F.2d 873, 875 (9th Cir. 1990). Moreover, Mr.  
5 Hawkins asserts – and the government does not dispute – that he and his family legally owned the  
6 firearms recovered in his residence. (ECF No. 138 at 16.) Regardless, those firearms are currently  
7 the subject of forfeiture proceedings and no longer available to Mr. Hawkins. (*Id.*) The government  
8 does not argue, or present any evidence, that Mr. Hawkins still possesses any firearms that would  
9 make him a continuing threat to the community. *See United States v. Marquez*, No. 18-cr-00197-  
10 CRB-1, 2018 WL 4773152, at \*3 (N.D. Cal. Oct. 3, 2018) (holding that the lack of evidence that  
11 the defendant still possessed firearms meant that he did “not necessarily pose any additional danger  
12 by being at [a residential treatment facility] rather than in government custody”).

13 **B. Whether there are any conditions that will reasonably assure Mr. Hawkins’**  
14 **appearance in court and the safety of the community**

15 First, the Court cannot discern any evidence beyond the fact of indictment that would make  
16 Mr. Hawkins a flight risk in this case. Even if it had, Mr. Hawkins’ strong familial and employment  
17 ties to the area would address any concerns the Court might have.

18 Whether Mr. Hawkins’ release presents a danger to the community is a closer question. The  
19 Court has concerns about the seriousness of the charged conduct and the evidence that the  
20 transaction at issue in this case is not an isolated incident. Given Mr. Hawkins’ lack of criminal  
21 history, his ability to obtain full-time employment, his strong familial connections to the Eastern  
22 District, and the lack of any allegations of violence, the Court cannot find by clear and convincing  
23 evidence that there are no conditions of release that will ensure the safety of the community. This  
24 accords with the assessment of Pretrial Services, which has presented the Court with suggested  
25 terms for Mr. Hawkins’ pretrial release.

26 Contrary to the government’s argument, these conditions do not rely entirely on Mr.  
27 Hawkins’ good faith compliance. (*See* ECF No. 145 at 11.) For example, location monitoring,  
28 “can deter criminal conduct by making a defendant ‘aware that he is being monitored and is likely

1 therefore to be apprehended should a . . . crime be reported at a time, and a location, at which he is  
2 present.”” *United States v. Russell*, 45 F.4th 436, 441 (D.C. Cir. 2022) (quoting *Belleau v. Wall*,  
3 811 F.3d 929, 935 (7th Cir. 2016)). Additionally, placing Mr. Hawkins with a third-party custodian  
4 puts an onus on his family, rather than Mr. Hawkins himself, to account for his whereabouts and  
5 activity. Considering the information each party has presented, the Court finds that these conditions  
6 will reasonably assure the safety of the community upon Mr. Hawkins’ release from custody.

7 Accordingly,

- 8 1. Mr. Hawkins’ motion to revoke the Magistrate Judge’s detention order, (ECF No.  
9 138), is granted;
- 10 2. Mr. Hawkins is ordered released at 9:00a.m. on the business day following the date  
11 this order is signed, under the conditions recommended by Pretrial Services in their  
12 Supplemental Pretrial Services report dated June 2, 2023;
- 13 3. Mr. Hawkins is ordered released subject to location monitoring under home  
14 detention to allow him only to leave the residence for work only and only during the  
15 hours needed to work.
- 16 4. Mr. Hawkins is ordered to be placed under the custody of the third-party custodian  
17 identified by Pretrial Services.

18  
19  
20 IT IS SO ORDERED.

21 Dated: July 18, 2023

22  
23  
24  
25  
26  
27  
28  
  
UNITED STATES DISTRICT JUDGE